IN THE HIGH COURT OF DELHI

Bail Application No.810/2007

#	Kunal Kapoor	.....	Petitioner
!	through:	Mr.O.P.Wadhwa, Adv. Mr.Rajat Wadhwa, Adv. and Mr.Rishikesh Kumar, Adv.	
		VERSUS	
$	State	.....	Respondent
^	through:	Mr.Jaideep Malik, Adv. for State. Ms.Rekha Palli, Adv. for the complainant.	

Bail Application No.1292/2007

#	Varun Popli @Varun & Anr.	.....	Petitioners
!	through:	Mr.O.P.Wadhwa, Adv. Mr.Rajat Wadhwa, Adv. and Mr.Rishikesh Kumar, Adv.	
		VERSUS	
$	State	.....	Respondent
^	through:	Mr.Jaideep Malik, Adv. for State. Ms.Rekha Palli, Adv. for the complainant.	

RESERVED ON: 02.11.2007

% DATE OF DECISION: 13.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Petitioners Kunal Kapoor, Varun Popli and Varun Sehgal seek bail in FIR No.800/06 under Section

363/376(2)(g)/506/341/342/366 IPC P.S. Janak Puri.

2. They along with co-accused Devender Singh @ Giani are the four persons put up for trial in the afore-noted FIR.

3. On 29.5.2007, all four accused persons were charged for having committed the offence punishable under Section 341/34 IPC, Section 342/34 IPC, 363/34 IC, Section 366/34 IPC, Section 376(2)(g)/34 IPC and Section 506/34 IPC.

4. Prosecutrix Km.SK aged 17 years is the alleged victim.

5. Criminal law was set into motion when in the intervening night of 26.12.2006 and 27.12.2006 at 3.05 am a wireless message was flashed to the local police station at P.S. Hari Nagar informing that from a mobile phone No.9811424384 message was received by the PCR that the daughter of the informant was abducted and removed in motor vehicle No.DL-4C-B-9005 and was left outside their residence and that she i.e. mother of the girl was taking her daughter to Mai Kamliwali Hospital, Rajouri Garden. A police officer was deputed to go to the hospital. Somewhere between 4 A.M. to 6.30 A.M. on 27.12.2006 the officer recorded the statement of Km.SK who informed that she was aged 17 years and was a student of class XII. That she used to take tuition from Mr.Kathuria and had left her house at 2 P.M. on 26.12.2006 to go the tuition center i.e. C-4, Janakpuri. The tutor was giving a test and she was to take the

same. After the test was over at 4.30 P.M. she left in a rickshaw for her residence. When the rickshaw reached near C4E, Janak Puri red light, chain of the rickshaw got snapped. She got down from the rickshaw to proceed on foot towards her house. She crossed the red light. A Scorpio car No.DL-4C-B-9005 stopped near her. A boy wearing a black coloured jacket pulled her inside the car where three more boys were sitting. They were addressing each other as Varun and Chuha. When the Scorpio car passed near PVR Vikas Puri she told the boys that her friend Chandan lived there and she will complain to him about them. At this, one boy out of the four took out his mobile phone and told her to talk to her friend stating that her friend could not harm them. That she contacted her friend Chandan on mobile No.9871458423. One boy out of the four told her that if Chandan received the call she should tell him not to take any phone call from her residence. That when she tried to talk to Chandan they disconnected the phone. That the four boys did wrong things with her in the moving car which was having tinted glasses. At 12.00 mid night they dropped her near her residence. Her four note-books were left in the car. The boy named Varun threatened her that she would be killed if she told anything to her mother.

6. Based on the statement of Km.SK, FIR was registered. Thereafter, a lady investigating officer, Inspector Usha Joshi was

deputed to investigate the matter. She recorded supplementary statement of Km.SK under Section 161 Cr.P.C. on 27.12.2006 wherein Km.SK ostensibly gave further details of what happened when she was forcible lifted from the road in addition to what she had stated earlier in the morning. She further informed and gave details as to in what manner the four boys, one after the other, committed rape upon her. She further informed that in addition to call she had made to her friend Chandan, the four boys had made her speak to her mother from a land line number from a PCO booth. She further stated that the Sikh boy in the car appeared to be familiar to her. (I may however note that in her examination-in-chief the prosecutrix has not been examined by the learned APP in respect to her alleged second statement recorded by the investigating officer, but during cross examination she has deposed that her statement was recorded twice by the police. Further I may note that no questions have been put to her regarding the alleged second statement. She has not even been re-examined by the learned APP to elicit clarification as to whether the second statement filed by the prosecution with the charge-sheet was the one she was referring to as her second statement when she was cross-examined.)

7. Accused persons were arrested on 27.12.2006. They were got medically examined between 1.15 PM to 1.35 PM at DDU Hospital, New Delhi.

8. As regards Km.SK, she was discharged after examination at Mai Kamliwali Hospital. Thereafter, on 29.12.2006, Km.SK was got further medically examined at DDU hospital, New Delhi.

9. MLC prepared by Mai Kamliwali Hospital records that Km.SK was brought by her mother to the hospital at 14.50 AM on 27.12.2006 i.e. intervening night between 26 and 27.12.2006. It recorded that Km.SK was in a state of drowsiness. That the mother of Km.SK who had brought her to the hospital informed that Km.SK was forcibly taken away by some unknown persons in a car and was kept confined and was dropped back in a drowsy condition. Physical examination noted in the MLC records that the body of Km.SK was having dust. The breast was normal without any injury. No injury mark was seen anywhere in the body. No laceration or tears were seen. The hymen was noted as intact. Seminal discharge was seen present on perineum. The MLC records that slide samples were taken and handed over to the police.

10. Being relevant it may be noted that in the MLC it was originally recorded that hymen was partially intact. Thereafter, the word '*partially*' was scored off. It may further be noted that the words "*no signs of torn hymen seen"* recorded in the MLC are over written on what was originally written with a different pen. What was originally written can be deciphered with a little close

look. Following appears to have been written originally : "*signs of torn hymen"*.

11. It appears that MLC as originally recorded read as follows: "*hymen partially intact, signs of torn hymen*". Thereafter, the work '*partially*' has been scored off. Before the word "*signs"* the word "*no"* has been written and after the word '*hymen*' the word '*seen*' is added. Thus, the original writing "*hymen partially intact, signs of torn hymen"* has been made to read : "*hymen intact, no signs of torn hymen seen*".

12. Being further relevant it may be noted that at DDU Hosptial when Km.SK was examined, the MLC was prepared vide proforma at serial No.32771 wherein it was recorded : "*present abrasions over right side of chest*". The said sentence was scored off. Thereafter, the MLC as a whole was scored off and new MLC was prepared vide proforma at serial No.32772. On the said MLC, no injury was recorded on the person of Km.SK It was further recorded in the said MLC that there were no injury marks seen on the body or on any private part. However, it was recorded : "*hymen not intact*".

13. When investigation was being conducted, mother of Km.SK filed an application before the learned ACMM informing that the investigation was being attempted to be thwarted. It was pointed out in the application that MLC on form at serial No.32771 should be requisitioned. Orders were passed by the

learned MM directing the I.O. to seize the MLC prepared vide form at serial No.32771. The same was seized and forms part of the record of sessions trial.

14. Pertaining to the medical examination of the accused persons, after they were arrested, the MLC of Varun Sehgal and Kunal Kapoor records : "*Scanty smegma seen*". MLC of Devender Singh does not record anything regarding presence or absence of smegma on the penis. MLC of Varun Popli records: "*smegma not seen*".

15. According to the prosecution, the accused persons could be tracked down because from the mobile No.9911276799, admittedly belonging to the accused Kunal Kapoor, a call was made to Chandan's mobile No.9871458423. With the help of said number Kunal Kapoor was tracked down and thereafter all others.

16. Statement of the prosecutrix was thereafter recorded under Section 164 Cr.P.C. before a Magistrate. She broadly recorded what was already stated by her in the supplementary statement recorded by Inspector Usha Joshi.

17. The Scorpio car in which alleged gang rape took place was seized by the police. Four note-books which Km.SK stated she had left in the Scorpio were seized from the Scorpio. From the back seat cover, fabric was lifted and sent for forensic examination. The same revealed no presence of human semen on the fabric. Clothes worn by Km.SK i.e. her under garments

and pant which were handed over to the police by the authorities at Mai Kamliwali Hospital and sent for forensic examination revealed no presence of human semen, but blood was detected. Underwears of the four accused persons which were handed over by the doctors after the accused persons were medically examined were likewise sent for forensic examination. The four underwears were marked Ex. 8, 11, 14 and 17 out of many exhibits which were sent for forensic examination. As per FSL report human semen was detected on all 4 underwears. The under garments of the four accused persons were seized by Inspector Usha Joshi on 27.12.2006 when same were handed over by Dr.Aarti, Dr.Ankush Garg and Dr.Rishi to her. It may be noted that Dr.Aarti had examined accused Devender Singh. Dr.Ankush Garg had examined accused Varun Sehgal and Kunal Kapoor. Dr.Rishi had examined accused Varun Popli.

18. Statement of Km.SK was recorded during trial on 10.9.2007 and 18.10.2007. She stated that on 26.12.2006 after taking the test conducted by Shri Kathuria, her tutor, she left the tutorial centre. It was cloudy and drizzling. She took a rickshaw to go to her house. The chain of the rickshaw broke. She disembarked and went ahead. As she crossed the red-light near Bharti College a Gypsy came from behind and one boy wearing a black colour jacket came out from the Gypsy and pushed her inside the Gypsy where one Sikh gentleman already inside the

Gypsy dragged her inside. There were 4 boys inside the vehicle. They were calling each other by the names of Varun, Chuha, Gyani and Sehgal. The Sikh boy took out a kirpan and pointed the same at her stomach and threatened that if she spoke too much she would be killed. The 4 boys drove the Gypsy from one place to another. The window panes of the Gypsy were black. The Sikh boy and the boy called Chuha started touching her body. She pointed towards accused Kunal Kapoor as Chuha and accused Devender as Gyani. She pointed towards accused Varun Sehgal as the boy who was driving the Gypsy and pointed accused Varun Popli as the fourth accomplice. She stated that accused Kunal Kapoor removed her pant and thereafter helped by Devender he removed her upper dress. At that point she saw a signboard of Vikaspuri and told the accused that several of her friends live in Vikaspuri and if they saw the accused they would kill them. At this, Kunal Kapoor handed over his cellphone to her and told her that she could make a call to her friend. From the cellphone of Kunal Kapoor she telephoned her friend Chandan. At that, Devender caught hold of her hair and told her to tell her friend Chandan that if he receives any call from her parents he should not respond. She told Chandan as directed by Devender. That Chandan inquired from her as to why she was saying this. Before she could say anything more Devender snatched the cellphone and disconnected the same. Thereafter Devender removed his

clothes and committed rape on her. Thereafter Kunal Kapoor put his finger in her vagina and raped her. She was in pain. She was made to wear her clothes. The Gypsy was driven on to a lonely road. Near a chemist shop which was closed the Gypsy was stationed near a STD booth. The accused along with her came out from the Gypsy and went to the STD booth. Devender dialled her mother's cellphone which he knew earlier. Devender told her to tell her mother that she was going to die. Devender put the phone near her ear. She told her mother as directed by Devender that she was going to die. Her mother enquired why she was speaking like that and told her not to worry as she would search her out. Devender disconnected the phone. She was taken back inside the Gypsy. Accused Varun and Devender slapped her. Once again they removed her clothes. Devender started pressing her breast. Thereafter Varun Popli followed by Varun Sehgal raped her in turn. She became unconscious and when she regained consciousness she found herself in Mai Kamliwali Hospital. Her mother, a doctor and a police officer were present. She was discharged from the hospital the next day. Her statement was recorded. That she did not know what was recorded in her statement but that it bore her signatures at point 'A' (the statement was exhibited as Ex.PW-1/A). She further stated that after a day or two of being discharged from the hospital she was taken to D.D.U. Hospital where she was

medically examined. That she had 2 notes registers with her and was also having the assignment of the tutorial centre and a photostate spiral bound notebook with her when she was abducted. She identified the Scorpio Ex.P-A as the vehicle in which she was abducted. She also identified, as Ex.P-5 and P-6 the registers she was carrying in which she would take down her notes at the tutorial centre. The spiral bound assignment sheets were identified by her as Ex.P-7 and the spiral bound notes were identified by her as Ex.P-8.

19. In cross-examination she admitted that accused Devender used to tease her when she was studying in class IX and that he was running a shop in DDA market near her house wherefrom her family used to purchase daily articles. She volunteered that when she completed class-IX the shop was closed. She stated that she could distinguish between a Gypsy and a Scorpio. Confronted with Ex.P-5 she stated that it was correct that it recorded notes up to 26.11.2006 but volunteered that the said date was wrongly mentioned and should read 26.12.2006. She further admitted that in the register there was no work of dated 19.12.2006, 21.12.2006 and 23.12.2006. She also admitted that there was no work done in the register Ex.P-5 after 12.12.2006. She denied that she never went to coaching centre after 12.12.2006. She denied that she would go elsewhere on the pretext of going to the coaching centre. She volunteered

that the tutor Mr.Kathuria used to mark her presence regularly in a register maintained by him. She also admitted that in the register Ex.P-5 only date prior to 12.12.2006 recorded as 25.11.2006. When cross examined regarding duration of time consumed by each accused when each allegedly raped her she said she was unable to remember the same.

20. In cross examination a suggestion was given to her that she was at Gurudwara Bangla Sahib. She denied the same. She denied the suggestion that she made 4 telephonic calls to Chandan after borrowing the cellphone from accused Kunal Kapoor. She denied the suggestion that on 26.12.2006 she went by metro train from Tagore Garden to Gurudwara Bangla Sahib and met Devender and Kunal Kapoor at the Gurudwara. She denied the suggestion that she was disturbed and was going to commit suicide but Devender stopped her from so doing. She denied the suggestion that around 10.00 pm Devender telephoned Varun Popli and Varun Sehgal from Bangla Sahib Gurudwara. She denied the suggestion that at 11.00 pm people at the parking at Gurudwara Bagla Sahib persuaded the accused to drop her at her residence. She denied the suggestion that the accused persons brought her from the parking of the Gurudwara Bangla Sahib and dropped her at her residence. She stated that as a result of the rape she had suffered bruises on her breast and there were bluish signs on her legs due to beating caused by the

accused persons. She disclosed that the mobile number of her mother was 9811424384 and that of Chandan was 9871458423. She admitted the suggestion that from the mobile phone of Kunal Kapoor she had spoken with Chandan. She stated that at Mai Kamliwali Hospital a police officer had recorded her statement. She stated that the entire incident was disclosed by her to a police officer.

21. Prosecutrix was confronted with her statement Ex.PW-1/A being the first statement recorded by the police officer wherein most of what was stated by her in examination-in-chief was not found correct. But she volunteered that what she had stated before the Court was stated by her to the police in her second statement. She admitted that in the morning at Mai Kamliwali Hospital her mother had told her that the accused persons have been apprehended.

22. Urging for freedom of the petitioners who are in judicial custody since 27.12.2006, Shri O.P.Wadhwa, learned counsel for the petitioners urged that the young age of the petitioners who are aged between 20 to 22 years should be kept in view. Their middle class background should also be taken into consideration. Counsel urged that keeping the petitioners with hardened criminals in jail is likely to be counter productive for the reason there is likelihood of the young minds being polluted by hardened criminals. Learned counsel drew attention of the Court to certain

features emanating from the testimony of Km.SK and the mobile phone record of accused Kunal Kapoor, the mother of the prosecutrix and the mobile phones of accused Varun Sehgal and Varun Popli. Counsel urged that though it is the law that a conviction can be sustained on the testimony of the prosecutrix but for this, the Court has to be reassured that the prosecutrix is trustworthy.

23. The features which were pointed out by Shri O.P.Wadhwa are as follows:-

(i) The manner in which the prosecutrix has alleged her abduction and commission of offence is not trustworthy. Drawing attention to the testimony of the prosecutrix in the cross examination that accused Devender was known to her and her testimony in examination-in-chief that Devender knew the mobile phone number of her mother when jaxtaposed with her version that she was abducted by 4 boys, one of whom was a Sikh boy renders her version suspect inasmuch as she already knew Devender.

(ii) The manner and sequence in which the prosecutrix alleged rape was highly unbelievable. Counsel drew attention to the testimony of the prosecutrix wherein she referred to her being raped by Devender and Kunal Kapoor after undressing her. Thereafter her being

made to wear her clothes. Followed by all 4 taking the prosecutrix outside the vehicle and facilitating a telephonic call between the prosecutrix and her mother from a land-line number. Followed by the prosecutrix being taken back to the car; undressed once again and thereafter raped by Varun Popli and Varun Sehgal.

(iii) It was urged that far from creating evidence against themselves perpetrators of crime would take steps to destroy the incriminating evidence. Counsel wondered as to why would Kunal Kapoor and the accused persons when they were having Km.SK in unlawful custody would make her speak to her friend and her mother. Counsel wondered: were the accused stupid to create incriminating evidence against themselves?

(iv) Drawing attention to the mobile phone record of the mother of the prosecutrix i.e. mobile telephone number 9811424384 and the mobile telephone number of Kunal Kapoor 9911276799 learned counsel pointed out that the same records incoming and outgoing calls of 183 and 117 seconds between the 2 numbers at 5.54 am and 5.58 am on 27.12.2006. This was followed by Kunal Kapoor ringing up the mother of the prosecutrix at 6.33 am, repeated call being made

at 7.06 am. The 4 telephone calls, one made by the mother of the prosecutrix to Kunal Kapoor and 3 made by Kunal Kapoor to the mother of the prosecutrix were highlighted by learned counsel to submit that this is not the conduct of an accused who had raped the daughter of the person with whom the accused was speaking. With reference to the mobile telephone of Varun Popli i.e. No.9910295777 and the telephone of Kunal Kapoor i.e. No.9911276799, counsel pointed out that the two had spoken at 5.56 am and 6.34 am on 27.12.2006. From the inter-se calls between the mother of the prosecutrix, Kunal Kapoor and Varun Popli learned counsel submitted that what had actually happened was that the mother of the prosecutrix had rung up Kunal Kapoor and had requested him to reach Mai Kamliwali Hospital as her daughter was in distress. They being the friends of her daughter she wanted help from them. The accused persons who had helped prosecutrix the previous evening went to the hospital to render assistance to the prosecutrix and her mother. They were led into a trap and arrested. Counsel urged that the accused persons voluntarily reaching the hospital when summoned by the mother of the prosecutrix shows their innocence.

(v) Drawing attention to the arrest memos of the accused persons learned counsel pointed out that the accused were shown arrested from their residence. Accused Devender Singh was shown arrested at 10.25 am. Accused Varun Popli was shows arrested at 11.20 am. Accused Kunal Kapoor was shown arrested at 11.50 am and accused Varun Sehgal was shown arrested at 12.30 pm. All were shown arrested from their house. Counsel pointed out that the arrest memos were ex facie fabricated documents for the reason prosecutrix, categorically deposed that when she was in the hospital, in the morning, her mother had told her that the accused had been arrested.

(vi) With reference to the medical examination of the prosecutrix counsel urged that at best it could be treated that the hymen of prosecutrix was partially intact, meaning thereby partially torn. It could not be so if 4 male adult persons had raped the prosecutrix. Counsel further submitted that neither was there any injury on the person of the prosecutrix now was there any injury on the person of the accused.

(vii) The next circumstance brought into aid by learned counsel for the petitioners was the absence of any semen stain from the vehicle in question used in the

commission of the crime as also absence of semen on the clothes worn by the prosecutrix.

(viii) Explaining the presence of semen on the undergarments of the accused, learned counsel submitted that when the accused persons were taken to the hospital for medical examination, as recorded in the MLC that there was nothing to suggest that the accused persons were not capable to performing sexual intercourse, the doctors had conducted the test to see whether stimulation of the sex organ of the accused resulted in erection followed by ejaculation of semen. It was this semen which was detected on their undergarments.

(ix) Counsel urged that Km.SK was a city bread girl and was expected to differentiate between a Gypsy and a Scorpio. Counsel highlighted the testimony of the prosecutrix where she referred to the vehicle in which she was raped as a Gypsy but the offending vehicle was claimed by the prosecution to be a Scorpio.

(x) Lastly it was pointed out that conduct of the mother of the prosecutrix was abnormal for the reason the mother claimed and so did the prosecutrix that the two had spoken at around 9.30 pm and the daughter had told the mother that she was going to die and yet the

mother did not take recourse to legal help.

24. Summing up his submissions, Shri O.P.Wadhwa, learned counsel for the petitioners urged that the petitioners were known to the prosecutrix. As suggested in the cross examination of the prosecutrix she had met them in a disturbed state of mind at Gurudwara Bangla Sahib. The accused persons had left the prosecutrix at her residence on humanitarian grounds on being persuaded by the people at the parking of the Gurudwara Bangla Sahib to so do. Counsel submits that since the issue was highlighted in the press the very next day and a nominee from the National Commission of Women had got involved the police came under a pressure to some how or the other break the case. The convenient method of false implication was resorted to by the police.

25. Learned counsel for the State Shri Jaideep Malik ably assisted by Ms.Rekha Palli, learned counsel for the complainant projected a contra view point and highlighted the incriminating circumstances against the accused persons. Learned counsel pointed out as follows:-

(a) That semen was found present on the underwears worn by the accused persons. It prima facie established sexual activity by the accused persons.

(b) MLC of accused Varun Popli categorically records '*smegma not seen*'. MLC of Varun Sehgal and Kunal

Kapoor records '*scanty smegma seen*'. Meaning thereby that there was positive evidence to suggest that Varun Popli had had sexual intercourse in the preceding less than 24 hours. That MLC of Varun Sehgal and Kunal Kapoor suggested sexual intercourse by the 2 for the reason presence of scanty smegma evidenced that some smegma had formed and accumulated on their sex organ in the intervening 12 hours after they had raped the prosecutrix.

(c) The telephone call details of Kunal Kapoor were curious as urged by learned counsel. Counsel submitted that Kunal Kapoor's mobile No.9911276799 evidenced constant calls being made to various numbers and especially the telephone of Varun Popli being No.9910295777. Counsel pointed out that right through midnight of the intervening night of 26 and 27 December 2006 Kunal Kapoor was constantly ringing up somebody or the other. Counsel pointed out that this was suggestive of the fact that the accused persons were attempting to create some alibi knowing fully well that as the prosecutrix knew them they would certainly be exposed shortly.

(d) Counsel urged that bestiality is not unknown in the world of sexual crimes. The influence of Hindi movies

where villains are shown committed rape in public and with impunity i.e. with a macho image could have led the accused persons to show their manhood in like manner. That the fact that the accused persons traumatized the victim and showed boldness by permitting her to ring up her mother and her friend is explainable under the circumstances.

(e) It was lastly urged that there was no occasion for the prosecutrix to have named the accused persons and especially when no enemity between the accused and the prosecutrix has been suggested.

(f) Conduct of the mother pertaining to the telephone call received by her from the daughter was explained with reference to calls made by the mother to her sister and the tuition centre to find the whereabouts of her daughter. Counsel stated that it is a normal tendency not to rush to the police due to social stigma which may get attached to a girl child.

26. Having considered the rival submissions it would be relevant to not the legal position before I evaluate the rival versions.

27. A conviction in a rape case can be sustained on the sole testimony of the prosecutrix provided the same inspires confidence meaning thereby there are no inherent contradictions

in the testimony of the prosecutrix. Further, while discussing the evidence for grant of bail or refusal thereof when other witnesses of the prosecution have yet to be examined, this Court is required to abstain from a meticulous appreciation of the partial evidence which is on record inasmuch as this exercise would have to be conducted when evidence is concluded.

28. Further, gravity of the offence including the manner in which it was committed, if found heinous would disentitle the accused to the grant of bail. Lastly, being an alleged case of gang rape, as per explanation (i) to Section 376 IPC even if the victim is raped by one or more persons acting in furtherance of their common intention, each person shall be deemed to have committed gang rape within the meaning of gang rape as defined in Section 376 IPC.

29. My discussion commences with a very important and in my opinion incriminating circumstance against the petitioners. As projected in defence when the prosecutrix was cross-examined, the prosecutrix, was having if not friendly, at least an acquaintance with the accused persons. All were together at Gurudwara Bangla Sahib and the accused persons suggested to the prosecutrix that people at the parking at Gurudwara Bangla Sahib had persuaded them to drop her at her residence. Suggestions which were put to the prosecutrix are that accused Devender and Kunal Kapoor met prosecutrix at Gurudwar Bangla

Sahib. They telephoned accused Varun Popli and Varun Sehgal. Thereafter at 11.00 pm all accused persons, on being persuaded by people at the parking, dropped the prosecutrix at her residence. If this was so, why did the accused persons virtually throw out the prosecutrix at the lane of her residence and not deposit her safely in the custody of her mother? Further, the first information received by the police was when the mother of the prosecutrix made a telephonic call at the PCR informed that she was taking her daughter to the hospital and that her daughter was traumatized and was dropped by unknown persons in a vehicle bearing No.DL4CV-9005. Indeed, this vehicle is the Scorpio in question and belongs to the uncle of Varun Popli. Knowledge of the mother of the prosecutrix pertaining to the number of the vehicle before information was flashed to the police is of vital importance.

30. It is true that the telephone record of Kunal Kapoor and Varun Popli does record inter-se conversation between the 2 from around 9.30 pm on 26.12.007 continuing till dawn the next day. But this would have to be understood and appreciated in the light of the suggestions put by the accused to the prosecutrix to the effect that at some point of time all accused persons and the prosecutrix were present together. Since further evidence has to be led, how the mystery unravels pertaining to these telephone calls would be a matter of evidence. I refrain from speculating,

surmising or from entering into conjectures. If I do so it will prejudice the trial.

31. Kunal Kapoor would have to explain as to why he continued taking all through out the night to some or the other. He would have to explain the 5 to 6 calls every hour of the midnight till the morning of 27 December 2006. Similarly, the prosecution would have to explain the positions of the accused persons if possible with reference to the towers from which the calls were transmitted and as recorded in the call details.

32. Suffice would it be to note that semen was detected in the slide sample taken from the perineum of the victim i.e. the region between the anus and the vulva. I may further note that there are cuttings and overwritings in the MLCs of the prosecutrix which have to be explained by the doctors. I further note that blood was detected in the undergarments worn by the prosecutrix. Her MLC does not record that she was in menstruation. Vis-a-vis the accused persons, to be fair to them, I may note that absence of any semen from the seat covers of the vehicle in question would have to be explained.

33. The prosecutrix was admittedly in company of Kunal Kapoor at 5.46 pm for the reason admittedly from the mobile number of Kunal Kapoor a call has been made to Chandan, the friend of the prosecutrix. Line of cross-examination adopted reveals that the prosecutrix was with the accused persons at

11.00 pm.

34. Lot of issues for or against the accused have to be unravelled. But at the moment it would be difficult to opine that the case of the prosecution is not falling.

35. Considering the gravity of the offence and the manner in which prosecution has alleged the rape committed on the prosecutrix, notwithstanding the young age of the petitioners, I am of the opinion that no case is made out to release the petitioners on bail.

36. The bail applications are dismissed. However, I direct the learned Trial Judge to expedite the trial and try and complete the same as quickly as possible and preferably within 6 months from the date of receipt of the present order.

November 13, 2007 (PRADEEP NANDRAJOG)
dk-bainsla JUDGE